IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1117 OF 2005

WITH

CIVIL APPLICATION NO.1379 OF 2005

Rashid Sattar Oomerbhoy ..Appellant.

Vs.

The Municipal Corporation of

Greater Mumbai & Ors. ..Respondents.

....

Mr.Shailesh Shah with Mr.Sanjay Jain with Ms.Deepa Mani i/b S.K.Srivastava & Co. for the Appellant.

Mrs.Geetanjali Joglekar for the BMC.

Mr.Naveen Parekh i/b Thakore Jariwala for the Respondent No.5.

CORAM : DR.D.Y.CHANDRACHUD, J.

22nd December, 2005.

P.C. :

1. The Municipal Corporation issued a notice on 27th September, 2005 under Section 354 of the Mumbai Municipal Corporation Act, 1888 to pull down the factory premises situated on C.S. No.1011/ 1012/ 1013/ 1014/ 1015. These factory premises

belong to Ahmed Oomer Oil Mills and are situated at the junction of M.S. Ali and Bapty Road, Two Tanks Mumbai. The notice issued by the Municipal Corporation states that a certain part of the structure is in a ruinous condition and is likely to fall and is dangerous to any person occupying the premises or passing by the premises. The Appellant and Respondents 5 to 8 are partners of a partnership firm which is under dissolution. They are beneficiaries of a wakf which is the landlord of the property. The Court Receiver has been appointed as Receiver of the assets and business of the firm in a suit instituted in this Court on its original side. The Receiver is consequently in possession of the factory premises. The notice issued by the Municipal Corporation was challenged by the Appellant in a suit before the City Civil Court. It appears that the Third Respondent had issued a notice on 3rd December, 2005 to take necessary steps to ensure the safety of the structure. The Municipal Corporation had issued a notice on 31st August, 2005 under Section 257 (1)(a) in respect of the factory premises requiring that certain work be carried out to ensure structural safety thereof. The Court Receiver had

moved a report before the Learned Single Judge of this Court hearing Receiver's Reports and on 24th October, 2005 this Court directed that in the event, within the time stipulated in the notice issued by the Municipal Corporation, no order has been passed by the Court of competent jurisdiction in the said notice, it would be open to the Receiver to take such steps including authorizing the Plaintiff to remove the disputed structure referred to in the notice of the Corporation. The case of the Appellant before the City Civil Court is that it is not necessary to demolish the entire factory premises and that only that part of the structure which is dilapidated needs to be demolished at this stage. The Motion came up before the Learned Trial Judge who declined ad interim relief by his order dated 16th November, 2005.

2. When this Appeal came up, an order was passed by this Court on 20th December, 2005 directing that an inspection be carried out by the Deputy Chief Engineer (Building Proposals) and the Executive Engineer (Special) of the Municipal Corporation who shall report upon the stability and

safety of the structure situated on C.S. No.1012. A report has accordingly been submitted to this Court by the Deputy Chief Engineer (Building Proposals). The report submitted by the Municipal Corporation shows that the factory buildings are interconnected and are situated on four City Survey Nos. 1011, 1012, 1014 and 1015. The report records that the record of the property/ business was not found in the building situated on C.S. No. 1012, but on the building on C.S.No.1014 on the fourth floor and that the aforesaid room appeared to be in sound condition in general. The existing chimney has been found to be in a dilapidated condition and it has been recorded that it has to be immediately pulled down or in the alternative to undergo structural repairs to ensure structural stability. The report contains the following observations in regard to a portion of the building facing the side of the Bapty Road:

> "It is here to be mentioned that, major cracks are observed in the structural members facing Bapty Road side. The reinforcement of structural members along Bapty Road heavily corroded & concrete

> lumps and plaster was seen to be loosened and given way at many places. The loose portion as mentioned is required to be removed immediately and structural members required to be strengthen under the supervision of Structural Engineer in order to ensure structural stability and safety of the passer by as it is directly abutting to Public road."

The Deputy Chief Engineer, however, has noted that his observations are only made on visual inspection and before arriving at any concrete conclusion, the opinion of a Registered Structural Engineer would be required to be taken. The relief which has been sought by the Appellant before the City Civil Court is in respect of the notice dated 27th September, 2005 only in so far as it pertains to the office building and the factory premises bearing C.S. No.1012. From the report of the Deputy Chief Engineer (Building Proposals), however it appears that the office building is situated not on C.S.No.1012 but on C.S.No.1014. In these circumstances, the Appellant has stated before the Court that an application would be made for

amending the plaint before the City Civil Court. The report of the Deputy Chief Engineer suggests that certain parts of the building and especially the existing chimney are in a dilapidated condition. In so far as the structure facing the side of Bapty Road is concerned the report records that it is necessary to remove the loose portion of concrete lumps and plaster immediately to avoid any danger to passers by. This work of removal must be carried out immediately and fairly that has not been opposed by any of the parties before the Court. However, it is also apparent from the report that on a visual inspection it appeared that the structural members are required to be strengthened under the supervision of a Structural Engineer in order to ensure structural stability and safety. In my view, having regard to the report which has been presented before the Court, it would be necessary that the Deputy Chief Engineer (Building Proposals), the Executive Engineer (Special) and a Registered Structural Engineer carry out a detailed inspection of the site together with an officer from the office of the DILR who would be in a position to identity each part of the structure with reference to the

corresponding city survey numbers. That report should be placed before the City Civil Court so as to enable the Court to reconsider the question as to whether all the structures need to be demolished or as to whether the structure of the office building can be preserved by carrying out necessary structural repairs. In the circumstances, this Appeal from Order shall stand disposed of with the following directions :

i) The Deputy Chief Engineer (Building Proposals) and the Executive Engineer (Special) of the Municipal Corporation shall carry out a fresh inspection of the office and factory building together with a Registered Structural Engineer. By consent of parties, Mr.N.N.Shrikhande shall stand appointed in the capacity of a Registered Structural Engineer for assisting the work of survey and in determining the structural safety and stability of the aforesaid structure. The DILR shall nominate an officer to accompany the aforesaid team so as to facilitate the identification of the survey numbers upon which different parts of

the building are situated. The inspection shall be carried out on 29th December, 2005 at 12.00 noon;

ii) A report shall thereupon be prepared by the inspection team which shall be submitted to the City Civil Court on or before 4th January, 2006. The City Civil Court shall after due consideration of the report submitted before it reconsider the Notice of Motion taken out by the Appellant herein for the grant of interim relief. In the meantime, there shall be a specific direction to the effect that the notice dated 27th September, 2005 shall be liable to be implemented in so far as the dilapidated portions of the chimney and the removal of concrete lumps and plaster as directed in the report of the Deputy Chief Engineer dated 22nd December, 2005 are concerned. Furthermore, until the Motion is taken up for final hearing by the City Civil Court, this order shall not be regarded as an order restraining the Municipal Corporation from ensuring that such work of demolition as is

necessary to preserve the safety of the occupants or, as the case may be, of passers by is carried out in accordance with law;

iii) Having regard to the urgency of the matter, the Learned Trial Judge is requested to dispose of the Motion expeditiously on the reopening on or before 23rd January, 2006.

iv) The Plaintiff has agreed to bear the fees of the Structural Engineer for carrying out the inspection.

An authenticated copy of this order shall be forwarded to the DILR by the Court Receiver forthwith.

The Appeal stands disposed of in the aforesaid terms.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.